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Committee, DCCC, and Nevada State  
Democratic Party

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

22 DONALD J. TRUMP FOR PRESIDENT,  
INC., REPUBLICAN NATIONAL  
COMMITTEE, and NEVADA REPUBLICAN  
PARTY,

23 Plaintiffs,

24 v.

25 BARBARA CEGAVSKE, in her official  
26 capacity as Nevada Secretary of State,

27 Case No.: 2:20-cv-01445-JCM-VCF

**MOTION TO INTERVENE AS  
DEFENDANTS**

**EXPEDITED BRIEFING SCHEDULE  
REQUESTED**

Defendant,  
and  
**DNC SERVICES  
CORPORATION/DEMOCRATIC  
NATIONAL COMMITTEE, DCCC, and  
NEVADA STATE DEMOCRATIC PARTY,**  
Proposed  
Intervenor-  
Defendants.

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor-Defendants DNC Services Corporation/Democratic National Committee (“DNC”), DCCC, and the Nevada State Democratic Party (“NSDP,” and collectively, “Proposed Intervenors”) move to intervene as defendants in the above-titled action. Defendant consents to this motion and Plaintiffs reserve taking a position.

The United States is in the midst of an unprecedented public health crisis; Nevada is no exception. The highly contagious coronavirus has fundamentally altered Nevadans' daily lives—including how they vote. Recognizing that the novel coronavirus will impact the November 3, 2020 general election (the "November Election"), the Nevada Legislature enacted Assembly Bill 4. It has two parts. The first—at issue in this lawsuit—articulates an infrastructure for elections held during states of emergency. These changes largely incorporate and supplement Nevada's existing election laws and provide greater certainty to election officials regarding how the November Election (and any future elections held during emergencies) should be conducted. The second part of Assembly Bill 4—not challenged by Plaintiffs—makes general, permanent changes to Nevada's election laws. As a result, the Legislature has taken the necessary and appropriate steps to ensure that all Nevadans have safe and meaningful opportunities to vote, both during the pandemic and after.

Plaintiffs Donald J. Trump for President, Inc., Republican National Committee, and Nevada Republican Party now seek to undo several of Assembly Bill 4's important provisions.

1 Plaintiffs allege a hodgepodge of claims, none of them viable, in an attempt to undermine the  
 2 State's efforts to provide certainty to election officials and protect Nevada voters during a public  
 3 health crisis. Their claims thus pose a clear and direct threat to Proposed Intervenors' rights and  
 4 legal interests.

5 For the reasons set forth below, Proposed Intervenors are entitled to intervene in this case  
 6 as a matter of right under Federal Rule of Civil Procedure 24(a)(2). Such intervention is needed  
 7 to protect the substantial and distinct legal interests of Proposed Intervenors, which will  
 8 otherwise be inadequately represented in this litigation. In the alternative, Proposed Intervenors  
 9 should be granted permissive intervention pursuant to Rule 24(b). In accordance with Rule 24(c),  
 10 a proposed Answer is attached as Exhibit 1.

11 Proposed Intervenors also respectfully request that this Court enter an expedited briefing  
 12 schedule on this Motion.

13 **BACKGROUND**

14 On March 24, 2020, in response to the coronavirus pandemic, Defendant Barbara  
 15 Cegavske (the “Secretary”) announced plans to “conduct an all-mail election” for the June 9,  
 16 2020 Primary (the “June Primary Plan”). Press Release, Nev. Sec’y of State, *Secretary Cegavske*  
 17 *Announces Plan to Conduct the June 9, 2020 Primary Election by All Mail* (Mar. 24, 2010),  
 18 <https://www.nvsos.gov/sos/Home/Components/News/News/2823/23>. While the June Primary  
 19 Plan required county election officials to mail ballots to all active registered voters, it  
 20 significantly reduced in-person voting opportunities, allocating only one polling location for each  
 21 county regardless of population. *Id.* Moreover, the June Primary Plan did *not* address the impacts  
 22 of Nevada election laws that burdened the right to vote for Nevadans attempting to vote by mail.

23 **A. The State Court Action**

24 On April 10, NSDP sent a letter to the Secretary expressing concern about the lack of in-  
 25 person polling locations in Nevada’s more populous counties and the likely disenfranchising  
 26 impact of Nevada’s voter assistance ban. *See* Letter to Hon. Barbara Cegavske, NSDP (Apr. 10,  
 27 2020), <https://nvdems.com/wp-content/uploads/2020/04/200410-Letter-to-Hon.-Barbara->

1 Cegavske.pdf. On April 16, after the Secretary refused to address NSDP's concerns, *see April*  
 2 Corbin Girnus & Arianna Skibell, *Nevada Dems Push for Changes to Upcoming All-Mail*  
 3 *Primary*, Nev. Current (Apr. 15, 2020), [https://www.nevadacurrent.com/2020/04/15/nevada-](https://www.nevadacurrent.com/2020/04/15/nevada-dems-push-for-changes-to-upcoming-all-mail-primary)  
 4 [dems-push-for-changes-to-upcoming-all-mail-primary](#), Proposed Intervenors—joined by  
 5 Priorities USA and a group of concerned Nevada voters (collectively, the “State Court  
 6 Plaintiffs”—filed a lawsuit in Nevada state court seeking declaratory and injunctive relief (the  
 7 “State Court Action”). *See* Compl. for Declaratory and Injunctive Relief, *Corona v. Cegavske*,  
 8 No. 20 OC 00064 1B (Nev. Dist. Ct. Apr. 16, 2020).<sup>1</sup> The State Court Plaintiffs’ complaint and  
 9 subsequently filed motion for preliminary injunction argued, among other things, that the Nevada  
 10 and U.S. Constitutions require Nevada election officials to provide additional voting locations in  
 11 more populous counties and allow third parties to assist voters in returning their mail ballots. The  
 12 Republican National Committee and Nevada Republican Party, both Plaintiffs here, moved for  
 13 and were granted intervention as defendants in the State Court Action. The State Court Plaintiffs  
 14 withdrew their request for an injunction as to the June 2020 primary election (the “June  
 15 Primary”) when Clark County agreed to open additional polling locations and provide other  
 16 remedial measures that would help people vote.<sup>2</sup>

17 Following the June Primary, on June 19, the State Court Plaintiffs filed an amended  
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19 <sup>1</sup> The *Corona* complaint can also be found attached to Proposed Intervenors’ motion to intervene  
 20 in a separate federal court action. *See* Mot. to Intervene as Defendants, Ex. 3, *Paher v. Cegavkse*,  
 No. 3:20-cv-00243-MMD-WGC (D. Nev. Apr. 27, 2020), ECF No. 27-3.

21 <sup>2</sup> Around the same time, a different set of voters filed suit in this Court, challenging the June  
 22 Primary Plan’s requirement that election officials mail ballots to active, registered voters. *See*  
 23 Verified Compl. for Declaratory and Injunctive Relief, *Paher v. Cegavkse*, No. 3:20-cv-00243-  
 24 MMD-WGC (D. Nev. Apr. 21, 2020), ECF No. 1. Among other things, the *Paher* plaintiffs  
 25 argued that vote by mail would result in an increased risk of voter fraud that threatened to dilute  
 26 their votes. Proposed Intervenors sought and were granted intervention as of right in that case.  
*See Paher v. Cegavkse*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at \*1 (D. Nev.  
 27 Apr. 28, 2020). This Court ultimately rejected the *Paher* plaintiffs’ claims—including their  
 28 “speculative claim of voter fraud”—and dismissed the case. *Paher v. Cegavkse*, No. 3:20-cv-  
 00243-MMD-WGC, 2020 WL 2089813, at \*1, \*5 (D. Nev. Apr. 30, 2020); *see also Paher v.*  
*Cegavkse*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 4431567, at \*7 (D. Nev. July 31, 2020).

1 complaint narrowing their claims to the State’s ban on voter assistance in returning mail ballots  
2 and its signature match laws for mailing and absentee ballots. *See* Am. Compl. for Declaratory  
3 and Injunctive Relief, *Corona v. Cegavske*, No. 20 OC 00064 1B (Nev. Dist. Ct. June 19, 2020).  
4 Trial was set for August 17, 2020, and discovery commenced.

In the meantime, the coronavirus pandemic worsened. Shortly before Nevada’s election officials decided to convert the June Primary to a mail-based election, on March 12, 2020, Nevada reported 11 total cases of COVID-19. *See Nevada Coronavirus Map and Case Count*, N.Y. Times <https://www.nytimes.com/interactive/2020/us/nevada-coronavirus-cases.html> (last visited Aug. 7, 2020). By July, Nevada was reporting between 412 and 1,437 new cases of COVID-19 *each day*. *See id.* In total, Nevada has experienced more than 53,000 confirmed case of COVID-19 to date. *See id.*<sup>3</sup>

## B. Assembly Bill 4

On August 3, the Nevada Legislature enacted Assembly Bill 4 (“A.B. 4”). See AB4, Nev. Elec. Legis. Info. Sys., <https://www.leg.state.nv.us/App/NELIS/REL/32nd2020Special/Bill/7150/Text> (last visited Aug. 7, 2020). Assembly Bill 4 makes several updates to the Nevada election code, only some of which are at issue in this case. Sections 2 to 27 codify procedures for conducting elections during declared states of emergency, including the November Election, with the stated purpose of ensuring that “[e]lection officials have certainty concerning the procedures to prepare for and conduct an” affected election and that “voters have faith and confidence that they can participate in [an] affected election and exercise their right to vote without fear for their health, safety and welfare under such circumstances.” A.B. 4, § 2.

<sup>23</sup> Relevant here, Sections 2 to 10 set forth the general principles governing interpretation of

<sup>3</sup> The number of confirmed deaths from COVID-19 has also greatly increased since Governor Sisolak first declared a state of emergency. On March 16, 2020, Nevada reported its first confirmed death from COVID-19. *See Nevada Coronavirus Map, supra.* Since then, at least 900 Nevadans have died from the disease. *See id.*

1 the law, and when the law applies. For example, Sections 5 and 8 define an “affected election”  
 2 subject to Sections 2 to 27 as one occurring when either the Governor or the Legislature has  
 3 proclaimed a state of emergency or declaration of disaster by a certain time. And Section 9  
 4 clarifies that the other, non-conflicting provisions of Chapter 293 of the Nevada Revised Statutes  
 5 (“N.R.S.”)—the election code—continue to apply to mail-based elections. Next, Sections 11 to  
 6 13 address the long lines experienced in the states’ most populous counties during the June  
 7 Primary by requiring Nevada counties to offer a minimum number of vote center polling  
 8 locations based on population. Then, Sections 15 and 16 modify Nevada’s current election  
 9 laws—which previously *allowed* counties to mail ballots to voters, *see* N.R.S. 293.213(4)—to  
 10 *require* counties to do so if an election is affected by a state of emergency. Finally, Sections 17  
 11 to 27 provide an infrastructure for mail-based elections, incorporating and building upon  
 12 preexisting election laws to ensure that mail-based elections under Assembly Bill 4 are  
 13 administered consistently with other Nevada elections. For example, Section 20 applies the  
 14 postmark law that already exists for absentee ballots to mail ballots. *Compare* A.B. 4, § 20 *with*  
 15 N.R.S. 293.317. And Section 22 codifies the authority county election officials already possess  
 16 and exercise to create procedures for processing ballots. Assembly Bill 4 also addresses the  
 17 concerns raised in the State Court Action by allowing third parties to assist voters in returning  
 18 mail ballots both in a state of emergency, *see* A.B. 4, § 21, and otherwise, *see id.*, §§ 44, 70.

19 Following the passage of Assembly Bill 4, but before it was even signed by the  
 20 Governor, counsel for Plaintiffs Republican National Committee and Nevada Republican  
 21 Party—intervenor-defendants in the State Court Action—demanded immediate dismissal of the  
 22 State Court Plaintiffs’ amended complaint in light of Assembly Bill 4, threatening to move for  
 23 sanctions if they did not oblige. The State Court Plaintiffs, acknowledging that Assembly Bill 4  
 24 fully addressed their claims, voluntarily dismissed the case on August 4.

### 25       C.     The Present Litigation

26       Later that day, Plaintiffs initiated this suit. Their complaint lodges five challenges to  
 27 Assembly Bill 4, all confined to Sections 2 to 27. Count I challenges its postmark law in the  
 28

1 context of mail-based elections. Count II challenges its guidelines for allocating vote center  
 2 polling locations. Count III challenges Section 22, which allows county election officials to  
 3 establish the procedures for processing and counting mail ballots. Count IV challenges Section  
 4 25, which provides guidance on the processing of ballots that are folded together in the same  
 5 return envelope. And Count V challenges Assembly Bill 4's entire mail-based election  
 6 infrastructure set forth in Sections 2 to 27 as a violation of the right to vote, based on the  
 7 purported threat of voter fraud.

8 Plaintiffs' success in this litigation would make it more difficult for Proposed  
 9 Intervenors' supporters and members to vote and threaten to undo the basis on which Proposed  
 10 Intervenors dismissed the State Court Action—both of which are interests not shared by the  
 11 present parties in this litigation. For these and other reasons, Proposed Intervenors now move to  
 12 intervene.

### 13 STANDARD OF LAW

14 “Rule 24 traditionally receives liberal construction in favor of applicants for  
 15 intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *accord Venetian*  
*Casino Resort, LLC v. Enwave Las Vegas, LLC*, No. 2:19-CV-1197 JCM (DJA), 2020 WL  
 17 1539691, at \*3 (D. Nev. Jan. 7, 2020) (noting intervention requirements “are broadly interpreted  
 18 in favor of intervention” (quoting *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006))); *see also W. Expl. LLC v. U.S. Dep’t of Interior*, No. 3:15-cv-00491-MMD-VPC, 2016 WL 355122,  
 20 at \*2 (D. Nev. Jan. 28, 2016) (noting Rule 24’s liberal construction and “focus[] on practical  
 21 considerations rather than technical distinctions”).

22 The Ninth Circuit “require[s] applicants for intervention as of right pursuant to Rule  
 23 24(a)(2) to meet a four-part test”:

24 (1) the motion must be timely; (2) the applicant must claim a “significantly  
 25 protectable” interest relating to the property or transaction which is the subject of  
 26 the action; (3) the applicant must be so situated that the disposition of the action  
 27 may as a practical matter impair or impede its ability to protect that interest; and  
 28 (4) the applicant’s interest must be inadequately represented by the parties to the  
 action.

1 *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1148 (9th Cir. 2010) (quoting *California ex*  
 2 *rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)).

3 “Rule 24(b) permits the Court to allow anyone to intervene who submits a timely motion  
 4 and ‘has a claim or defense that shares with the main action a common question of law or fact.’”  
 5 *Nevada v. United States*, No. 3:18-cv-569-MMD-CBC, 2019 WL 718825, at \*2 (D. Nev. Jan. 14,  
 6 2019) (quoting Fed. R. Civ. P. 24(b)(1)(B)).

7 **ARGUMENT**

8 **I. Proposed Intervenors satisfy Rule 24(a)’s requirements for intervention as a matter  
 9 of right.**

10 Proposed Intervenors satisfy each of the four requirements of Rule 24(a).

11 **First**, the motion is timely. Plaintiffs filed their complaint on August 4, 2020; this motion  
 12 follows three days later, and before any substantive activity in the case. There has therefore been  
 13 no delay, and no possible risk of prejudice to the other parties. *See League of United Latin Am.*  
 14 *Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997); *see also Nevada*, 2019 WL 718825, at  
 15 \*2 (granting motion to intervene filed several weeks after action commenced); *W. Expl.*, 2016  
 16 WL 355122, at \*2 (granting motion to intervene filed nearly two months after action  
 17 commenced).

18 **Second** and **third**, Proposed Intervenors have significant protectable interests in this  
 19 lawsuit that might be impaired by Plaintiffs’ causes of action. “An applicant [for intervention]  
 20 has a ‘significant protectable interest’ in an action if (1) it asserts an interest that is protected  
 21 under some law, and (2) there is a ‘relationship’ between its legally protected interest and the  
 22 plaintiff’s claims.” *W. Expl.*, 2016 WL 355122, at \*2 (quoting *Lockyer*, 450 F.3d at 441). In  
 23 assessing whether such an interest is sufficiently “impair[ed] or impede[d],” Fed. R. Civ. P.  
 24(a)(2), courts “look[] to the ‘practical consequences’ of denying intervention.” *Nat. Res. Def.*  
 25 *Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*, 385 F.2d 694,  
 26 702 (D.C. Cir. 1967)). “Once an applicant has established a significantly protectable interest in  
 27 an action, courts regularly find that disposition of the case may, as a practical matter, impair an

1 applicant's ability to protect that interest." *Venetian Casino Resort*, 2020 WL 1539691, at \*3  
 2 (citing *Lockyer*, 450 F.3d at 442).

3 Plaintiffs' challenge to Assembly Bill 4 would impair Proposed Intervenors' legally  
 4 protected interests. In addition to representing the interests of its members who risk  
 5 disenfranchisement, Proposed Intervenors also possess organizational interests that are  
 6 threatened by Plaintiffs' lawsuit. If Plaintiffs succeed and the challenged portions of Assembly  
 7 Bill 4 are enjoined, then Proposed Intervenors—each of which is an organization dedicated to  
 8 promoting the franchise and supporting the election of Democratic Party candidates—will suffer  
 9 direct injury because fewer Democratic voters will have an opportunity to vote and have their  
 10 votes counted in the November Election and future contests. Without expansive opportunities to  
 11 vote by mail coupled with meaningful opportunities to vote in person, many Nevadans will be  
 12 forced to choose between risking their health to vote and participating in the November Election.  
 13 The result will be far less robust turnout among Democratic supporters. Courts have routinely  
 14 concluded that interference with a political party's electoral prospects constitutes a direct injury  
 15 that satisfies Article III standing, which goes beyond the requirement needed for intervention  
 16 under Rule 24(a)(2) in this case. *See, e.g., Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir.  
 17 1981) (holding that "the potential loss of an election" is sufficient injury to confer Article III  
 18 standing); *see also Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–87 (5th Cir. 2006)  
 19 (recognizing that "harm to [] election prospects" constitutes "a concrete and particularized  
 20 injury"); *cf. Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) (noting that an  
 21 intervenor by right only needs "Article III standing in order to pursue relief that is different from  
 22 that which is sought by a party with standing"). Indeed, Proposed Intervenors have intervened in  
 23 several voting cases this cycle on this very theory. *See Issa v. Newsom*, No. 2:20-cv-01044-  
 24 MCE-CKD, 2020 WL 3074351, at \*3 (E.D. Cal. June 10, 2020) (granting intervention of right to  
 25 DCCC); *Republican Nat'l Comm. v. Newsom*, No. 2:20-cv-01055-MCE-CKD, slip op. at 5 (E.D.  
 26 Cal. June 10, 2020), ECF No. 38 (same); *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC,  
 27 2020 WL 2042365, at \*2 (D. Nev. Apr. 28, 2020) (granting intervention as of right to DNC,  
 28

1 DCCC, and NSDP where “Plaintiffs’ success on their claims would disrupt the organizational  
 2 intervenors’ efforts to promote the franchise and ensure the election of Democratic Party  
 3 candidates”).

4 Moreover, the disruptive and disenfranchising effects of Plaintiffs’ action would require  
 5 Proposed Intervenors to divert resources to address restricted voting opportunities—another  
 6 legally protected interest that is implicated by Plaintiffs’ claims. *See, e.g., Crawford v. Marion*  
 7 *Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (concluding “new law injure[d] the  
 8 Democratic Party by compelling the party to devote resources” that it would not have needed to  
 9 devote absent the new law), *aff’d*, 553 U.S. 181 (2008); *Democratic Nat'l Comm. v. Reagan*, 329  
 10 F. Supp. 3d 824, 841 (D. Ariz. 2018) (finding standing where law “require[d] Democratic  
 11 organizations . . . to retool their [get-out-the-vote] strategies and divert [] resources”), *rev’d on*  
 12 *other grounds sub nom. Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (en  
 13 banc). Accordingly, Proposed Intervenors satisfy the second and third requirements of Rule  
 14 24(a)(2).

15 **Fourth**, Proposed Intervenors cannot rely on the parties in this case to adequately  
 16 represent their interests. “Courts consider three factors when assessing whether a present party  
 17 will adequately represent the interests of an applicant for intervention”:

18 (1) whether the interest of a present party is such that it will undoubtedly make all  
 19 of a proposed intervenor’s arguments; (2) whether the present party is capable and  
 20 willing to make such arguments; and (3) whether a proposed intervenor would  
 21 offer any necessary elements to the proceeding that other parties would neglect.

22 *W. Expl.*, 2016 WL 355122, at \*3 (quoting *Arakaki*, 324 F.3d at 1086). “[T]he requirement of  
 23 inadequacy of representation is satisfied if the applicant shows that representation of its interests  
 24 ‘may be’ inadequate,” and therefore “the burden of making this showing is minimal.” *Id.*  
 25 (quoting *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983)).

26 While the Secretary has an undeniable interest in defending the actions of state  
 27 government, Proposed Intervenors have a different focus: ensuring that every Democratic voter  
 28 in Nevada has a meaningful opportunity to cast a ballot and have that ballot counted, both in the

1 November Election and in future elections. Courts have “often concluded that governmental  
 2 entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals, Inc.*  
 3 *v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *accord Citizens for Balanced Use v. Mont.*  
 4 *Wilderness Ass’n*, 647 F.3d 893, 899 (9th Cir. 2011) (“[T]he government’s representation of the  
 5 public interest may not be ‘identical to the individual parochial interest’ of a particular group just  
 6 because ‘both entities occupy the same posture in the litigation.’” (quoting *WildEarth Guardians*  
 7 *v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009))). That is the case here, where Proposed  
 8 Intervenors have specific interests and concerns—from their overall electoral prospects to the  
 9 most efficient use of their limited resources to promote get-out-the-vote-efforts—that neither the  
 10 Secretary nor any other party in this lawsuit shares. *See Paher*, 2020 WL 2042365, at \*3  
 11 (granting intervention as of right where proposed intervenors “may present arguments about the  
 12 need to safeguard Nevada[ns’] right to vote that are distinct from [state defendants’]  
 13 arguments”); *Associated Gen. Contractors of Am. v. Cal. Dep’t of Transp.*, No. 09-01622, 2009  
 14 WL 5206722, at \*2–3 (E.D. Cal. Dec. 23, 2009) (granting intervention where defendant state  
 15 agency’s “main interest is ensuring safe public roads and highways” and agency “is not charged  
 16 by law with advocating on behalf of minority business owners” as intervenors would). Indeed,  
 17 the Secretary’s inability to adequately safeguard Proposed Intervenors’ interests is evidenced by  
 18 the course of the State Court Action, in which Proposed Intervenors and the Secretary were  
 19 opposing parties. Proposed Intervenors cannot rely on the Secretary—their adversary in the State  
 20 Court Action—to adequately safeguard their legally protected interests in this case.

21 Phrased in the parlance of Rule 24, neither Plaintiffs nor the Secretary have interests  
 22 “such that [they] will undoubtedly make all of” Proposed Intervenors’ arguments. *W. Expl.*, 2016  
 23 WL 355122, at \*3 (quoting *Arakaki*, 324 F.3d at 1086). While the Secretary might defend  
 24 Assembly Bill 4 as a law properly passed by the Nevada Legislature, she is less likely to join  
 25 Proposed Intervenors in advocating that certain of Assembly Bill 4’s policies challenged in this  
 26 suit are *required* to safeguard Nevadans’ right to vote. By actively arguing against Proposed  
 27 Intervenors’ positions in the State Court Action, the Secretary has clearly demonstrated that she  
 28

1 is neither “capable [nor] willing to make such” critical arguments. *W. Expl.*, 2016 WL 355122, at  
 2 \*3 (quoting *Arakaki*, 324 F.3d at 1086); *see also, e.g., Kleissler v. U.S. Forest Serv.*, 157 F.3d  
 3 964, 974 (3d Cir. 1998) (granting motion to intervene as of right where private parties’ interests  
 4 diverged from the government’s interest in representation, and where “[t]he early presence of  
 5 intervenors may serve to prevent errors from creeping into the proceedings, clarify some issues,  
 6 and perhaps contribute to an amicable settlement”); *Venetian Casino Resort*, 2020 WL 1539691,  
 7 at \*4 (granting intervention where intervenor and defendant “ha[d] a similar interest” but it was  
 8 “conceivable that [defendant’s] interest . . . could conflict with [intervenor’s] interest”); *Ohio*  
 9 *River Valley Envtl. Coal., Inc. v. Salazar*, No. 3:09-0149, 2009 WL 1734420, at \*1 (S.D.W. Va.  
 10 June 18, 2009) (granting motion to intervene as of right where defendant and proposed  
 11 intervenor had identical goals but the “difference in degree of interest could motivate the  
 12 [intervenor] to mount a more vigorous defense” and “[t]he possibility that this difference in vigor  
 13 could unearth a meritorious argument overlooked by the current Defendant justifies the potential  
 14 burden on having an additional party in litigation”).

15 Proposed Intervenors intend to forcefully promote the ability of *all* eligible Nevadans to  
 16 cast ballots in the November Election and have those ballots counted. Because these arguments  
 17 will not be made by the current parties to the litigation, Proposed Intervenors cannot rely on the  
 18 Secretary to provide adequate representation. They have thus satisfied the four requirements for  
 19 intervention as of right under Rule 24(a)(2). *See Paher*, 2020 WL 2042365, at \*3 (granting DNC,  
 20 DCCC, and NSDP intervention as of right in challenge to the June Primary Plan).

21 **II. Alternatively, Proposed Intervenors satisfy Rule 24(b)’s requirements for  
 22 permissive intervention.**

23 Even if this Court were to find Proposed Intervenors ineligible for intervention as of  
 24 right, they easily satisfy the requirements for permissive intervention under Rule 24(b), which  
 25 provides the Court with broad discretion “to allow anyone to intervene who submits a timely  
 26  
 27  
 28

1 motion and ‘has a claim or defense that shares with the main action a common question of law or  
 2 fact.’” *Nevada*, 2019 WL 718825, at \*2 (quoting Fed. R. Civ. P. 24(b)(1)(B)).<sup>4</sup> “Because a court  
 3 has discretion in deciding whether to permit intervention, it should consider whether intervention  
 4 will cause undue delay or prejudice to the original parties, whether the applicant’s interests are  
 5 adequately represented by the existing parties, and whether judicial economy favors  
 6 intervention.” *Id.* (citing *Venegas v. Skaggs*, 867 F.2d 527, 530–31 (9th Cir. 1989)).

7 For the reasons discussed in Part I *supra*, Proposed Intervenors’ motion is timely, and  
 8 they cannot rely on the Secretary to adequately protect their interests. Proposed Intervenors also  
 9 have defenses to Plaintiffs’ claims that share common questions of law and fact—for example,  
 10 whether Plaintiffs have stated a claim under the Equal Protection Clause.

11 And significantly, intervention will result in neither prejudice nor undue delay. Proposed  
 12 Intervenors have an undeniable interest in a swift resolution of this action to ensure that  
 13 Assembly Bill 4 is timely implemented to allow every eligible Nevadan to cast a ballot—and  
 14 have that ballot counted—in the November Election. Indeed, Proposed Intervenors contend that  
 15 *this action itself* threatens to cause harmful delays that could stymie the State’s efforts to  
 16 circulate mail ballots. Proposed Intervenors therefore have a strong interest in defending  
 17 Assembly Bill 4 and opposing Plaintiffs’ lawsuit. Given the legal and factual shortcomings of  
 18 Plaintiffs’ claims, Proposed Intervenors are confident that their intervention in this case, and the  
 19 filings that will follow, will result in expeditious resolution of this litigation.

20 **REQUEST TO EXPEDITE BRIEFING SCHEDULE**

21 Proposed Intervenors believe that expeditious resolution of the Motion would serve the  
 22 interests of judicial efficiency and ensure that Proposed Intervenors are able to protect their  
 23 rights and interests. Proposed Intervenors respectfully request the following briefing schedule:  
 24 \_\_\_\_\_

25 <sup>4</sup> Although permissive intervention also generally requires that “the court has an independent  
 26 basis for jurisdiction,” that finding “is unnecessary where, as here, in a federal question case the  
 27 proposed intervenor raises no new claims.” *Nevada*, 2019 WL 718825, at \*2 (quoting *Donnelly*  
 28 *v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998)).

- Responses to Proposed Intervenors' Motion to Intervene as Defendants shall be filed on or before Wednesday, August 12, 2020; and
    - Proposed Intervenors' reply briefs, if any, shall be filed on or before Thursday, August 13, 2020.

## CONCLUSION

For the reasons stated above, Proposed Intervenors respectfully request that the Court grant their motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit them to intervene under Rule 24(b).

DATED this 7th day of August, 2020

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*\*Pro hac vice applications forthcoming*

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on this 7th of August, 2020 a true and correct copy of **MOTION TO**  
3 **INTERVENE AS DEFENDANTS** was served via the United States District Court's CM/ECF  
4 system on all parties or persons requiring notice.

5

6                   By: /s/ Danielle Fresquez

7                   Danielle Fresquez, an Employee of  
8                   WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
9                   RABKIN, LLP

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